APPENDIX A

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment of the United States Constitution, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article VII, Section 41 of the Louisiana Constitution:

> . . . All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, be tried by the judge without a jury. Cases, in which the punishment may be at hard labor, shall be tried by a jury of five, all of whom must concur to render a verdict; cases, in which the punishment is necessarily at hard labor, by a jury of twelve, nine of whom must concur to render a verdict; cases in which the punishment may be capital, by a jury of twelve, all of whom must concur to render a verdict.

Article 779, Code of Criminal Procedure of Louisiana:

> Trial of Misdemeanors
>
> A defendant charged with a misdemeanor shall be tried by the court without a jury.

Louisiana Revised Statutes 14:2:

> § 2. Definitions

In this Code the terms enumerated shall have the designated meaning:

* * * * *

"Felony" is any crime for which an offender may be sentenced to death or imprisonment at hard labor.

* * * * *

"Misdemeanor" is any crime other than a felony.

* * * * *

Louisiana Revised Statutes 14:35:

§ 35. Simple battery

Simple battery is a battery, without the consent of the victim, committed without a dangerous weapon.

Whoever commits a simple battery shall be fined not more than three hundred dollars, or imprisoned for not more than two years, or both.

APPENDIX B

THE RIGHT TO TRIAL BY JURY OUTSIDE LOUISIANA

The following thirty-eight states guarantee a right to trial by jury equal to or greater than the right secured in federal courts under the Sixth Amendment. In each of these states, a defendant charged with an offense punishable by more than six months imprisonment is entitled to be tried by a twelve man jury, all of whom must concur in the verdict. Compare *Patton v. United States*, 281 U.S. 276 (1930).

Alabama: CONSTITUTION, art. 1, § 6, art. 1, § 11; Amendment XXXVII; ALA. CODE tit. 15, § 227; tit. 13, §§ 126, 327; tit. 7, § 264; tit. 13, §§ 424, 429; tit. 30, § 99(1) (1958); *Baader v. State*, 201 Ala. 76, 77 So. 370 (1917).

Arizona: CONSTITUTION, art. 2, § 24, art. 2, § 23; ARIZ. REV. STAT. ANN. § 21-102 (1956); § 21-103, § 22-301 (Supp. 1966), § 22-402 (1956); ARIZ. R. CRIM. P. 300.

Arkansas: CONSTITUTION, art. 2, § 10, art. 2, § 7; ARK. STAT. ANN. § 43-1901, § 43-2160 (1964).

California: CONSTITUTION, art. 1, § 7; *Ex parte Wong Yon Ting*, 106 Cal. 296, 39 Pac. 627 (1895); CAL. PEN. CODE ANN. § 1140 (1956); *People v. Howard*, 211 Cal. 322, 295 Pac. 333 (1930).

Colorado: CONSTITUTION, art. 2, § 16, art. 2, § 23; (See COLO. REV. STAT. ANN. § 79-15-4, *repealed*, Laws 1964, p. 436, § 73); COLO. REV. STAT. ANN. § 39-7-20.

Connecticut: CONSTITUTION, art. 1, § 8, art. 1, § 19; CONN. GEN. STAT. ANN. § 54-82 (1960), §§ 51-266, 51-273 (Supp. 1966); *State v. Gannon*, 75 Conn. 206, 52 Atl. 727 (1902).

Delaware: CONSTITUTION, art. 1, § 7, art. 1, § 4, art. 4, § 28; DEL. CODE ANN. tit. 10, § 4519 (1953); DEL. SUPER. CT. (CRIM.) R. 23(a)(b), 31 (1953); DEL. CODE ANN. tit. 11, § 2701 (Supp. 1966).

Georgia: CONSTITUTION, § 2-105, § 2-5101; GA. CODE ANN. § 59-707 (1965); *Sullivan v. State*, 29 Ga. App. 377, 115 S.E. 2d 290 (1923).

Hawaii: CONSTITUTION, art. 1, § 11; HAWAII REV. LAWS, § 231-9 (1955).

Idaho: CONSTITUTION, art. 1, § 7; *State v. Jutilla*, 34 Id. 595, 202 Pac. 566 (1921); IDAHO CODE ANN. § 18-113; *State v. Scheminisky*, 31 Id. 504, 508, 174 Pac. 611 (1918).

Illinois: CONSTITUTION, art. 2, § 9, art. 2, § 5; ILL. ANN. STAT. ch. 78, §§ 20, 23 (Smith-Hurd 1966); *People v. Lobb*, 17 Ill. 2d. 287, 161 N.E. 2d 325 (1959).

Indiana: CONSTITUTION, art. 1, § 13; IND. ANN. STAT. § 9-1501, § 9-1811 (1956).

Kansas: CONSTITUTION, Bill of Rights § 10, Bill of Rights § 5; KAN. GEN. STAT. ANN. § 62-1412, § 62-1501 (1964).

Maine: CONSTITUTION, art. 1, § 6; ME. R. CRIM. P. 23(b), 31(a).

Maryland: CONSTITUTION, Declaration of Rights, art. 21, art. 5; Md. Rules P. 743, 758.

Massachusetts: CONSTITUTION, Pt. 1 art. XII, § 13; *Jones v. Robbins*, 74 Mass. 329, 341, 343-45, 347 (1857); MASS. GEN. LAWS ANN. ch. 234, § 26B (Supp. 1966); ch. 234 § 33 (1959); *Commonwealth v. Bellino*, 320 Mass. 635, 71 N.E. 2d 411 (1947).

Michigan: CONSTITUTION, art. 1, § 20, art. 1, § 14; MICH. STAT. ANN. § 27.3936(13), § 28.1192 (1954).

Minnesota: CONSTITUTION, art. 1, § 6, art. 1, § 4; MINN. STAT. § 593.01 (1947).

Mississippi: CONSTITUTION, art. 3, § 26, art. 3, § 31; MISS. CODE ANN. § 1615; (Supp. 1966) §§ 1836, 1202 (1957).

Missouri: CONSTITUTION, art. 1, § 18(a), art. 1, § 22(a); MO. REV. STAT. § 546.390, § 543.250 (1959).

Montana: CONSTITUTION, art. 3, § 16, art. 3, § 23; MONT. REV. CODES ANN. § 94-116 (1964).

Nebraska: CONSTITUTION, art. 3, § 11, art. 3, § 6; NEB. REV. STAT. §§ 18-205, 18-201 (1962); § 29-2022 (1965).

Nevada: CONSTITUTION, art. 1, § 3; *State v. McClear*, 11 Nev. 39 (1876); NEV. REV. STAT. § 175.480 (1963).

New Hampshire: CONSTITUTION, pt. 1, art. 15; *State v. Ray*, 63 N.H. 406 (1885). *Opinion of the Justices*, 41 N.H. 550 (1860).

New Jersey: CONSTITUTION, art. 1, § 10, art. 1, § 9; N.J. STAT. ANN. § 2A:74-1 (1952); *State v. Gibson*, 15 N.J. 384, 105 A. 2d 1 (1959).

New Mexico: CONSTITUTION, art. 2, § 14, art. 2, § 12; N.M. STAT. ANN. § 36-12-3, § 36-2-5 (1964).

North Carolina: CONSTITUTION, art. 1, § 13, art. 1, § 19, art. IV, § 27; N.C. GEN. STAT. § 15-177, § 15-177.1, § 7-204, § 7-393 (1953); *State v. Berry*, 190 N.C. 363, 130 S.E. 12 (1925).

North Dakota: CONSTITUTION, art. 1, § 7; N.D. CENT. CODE § 40-18-17 (Supp. 1965), § 33-12-19, § 29-22-14 (1960).

Ohio: CONSTITUTION, art. 1, § 10, art. 1, § 5; OHIO REV. CODE ANN. § 2938.06, § 2945.77 (1964 Baldwin).

Pennsylvania: CONSTITUTION, art. 1, § 9, art. 1, § 6; *Commonwealth v. Widmeyer*, 149 Pa. Super. 91, 26 A. 2d 125 (1942); PA. STAT. ANN. tit. 17,

§ 1142; *Commonwealth v. Fugmann*, 330 Pa. 4, 28, 198 Atl. 99 (1938).

Rhode Island: CONSTITUTION, art. 1, § 10, art. 1, § 15; R.I. GEN. LAWS ANN. § 9-10-12 (1956).

South Dakota: CONSTITUTION, art. 6, § 7, art. 6, § 6; S.D. CODE § 34.3673 (Supp. 1960).

Tennessee: CONSTITUTION, art. 1, § 9, art. 1, § 6; TENN. CODE ANN. § 40-2504 (Supp. 1966); *Memphis v. Trigally*, 46 Tenn. 382 (1869); *Woods v. State*, 99 Tenn. 182, 41 S.W. 811 (1897).

Vermont: CONSTITUTION, ch. 1, art. 10, ch. 1, art. 12; VT. STAT. ANN. tit. 12, § 1505 (1958).

Washington: CONSTITUTION, art. 1, § 22, art. 1, § 21; WASH. REV. CODE ANN. § 2-36-050; § 3-20-040; § 35-20-090; § 35-20-030; § 10-61-040 (1965).

West Virginia: CONSTITUTION, art. 3, § 14; W. VA. CODE ANN. § 5175[50-18-7] (1961).

Wisconsin: CONSTITUTION, art. 1, § 7, art. 1, § 5; WIS. STAT. ANN. § 957-01, § 62.24, (Supp. 1967); § 959.01 (1958); *Rothbauer v. State*, 22 Wis. 468 (1868).

Wyoming: CONSTITUTION, art. 1, § 10, art. 1, § 9, art. 5, § 22; WYO. STAT. ANN. § 7-427, § 7-409, § 5-130, § 5-123 (1957).

The following five states guarantee a right to trial by jury in all cases in which a jury would be available in federal courts under the Sixth Amendment. A jury of less than twelve men is provided, however, in cases in which the maximum sentence may not exceed one year imprisonment.

Alaska: CONSTITUTION, art. 1, § 11; ALASKA STAT. § 22.15.150; § 22.15.060, § 11.75.030 (1962) (six jurors in District Magistrate Court).

Iowa: CONSTITUTION, art. 1, § 10, art. 1, § 9; IOWA

CODE §§ 602.39, 602.15, 687.7 (1966) (six jurors in Municipal Court).

Kentucky: CONSTITUTION, §§ 7, 11, 248; KY. REV. STAT. § 25.010, § 26.010 (Supp. 1966), KY. R. CRIM. P. 9.82 (six jurors in inferior courts).

Oklahoma: CONSTITUTION, art. 2, § 20, art. 2, § 19; OKLA. STAT. tit. 20, § 272, tit. 21, § 10 (1951) (six jurors in County Court). (The verdict in these misdemeanor cases may be rendered by three-fourths of the whole number of jurors).

Virginia: CONSTITUTION, art. 1, § 8, art. 1, § 11; VA. CODE § 19.1-206, § 18.1-9 (1960) (five jurors in misdemeanor cases).

Texas guarantees a right to trial by jury in all cases in which a jury would be available in federal courts under the Sixth Amendment. A jury of six men is provided, however, in the county court in cases in which the punishment may not exceed two years. In the district court, in misdemeanor cases, nine members of the jury may render a verdict. CONSTITUTION, art. 1, § 10, art. 1, § 15, art. 5, § 17; TEX. CODE CRIM. P. ANN. art. 4.07 (1966); TEX. PEN. CODE ANN. art. 1148 (1961); TEX. CODE CRIM. P. ANN. art. 37.02 (1966).

The following two states guarantee a right to trial by jury for all offenses in which a jury would be available in federal courts under the Sixth Amendment. A jury of less than twelve men is provided, however, for all but capital cases.

Florida: CONSTITUTION, Declaration of Rights §§ 11, 3, art. 5, § 22; FLA. STAT. § 913.10, § 919.10 (1965) (six jurors in all cases not capital).

Utah: CONSTITUTION, art. 1, § 12, art. 1, § 10; UTAH CODE ANN. § 78-46-5 (1953) (eight in courts

of general jurisdiction, four in courts of inferior jurisdiction).

Oregon guarantees a right to trial by jury for all offenses in which a jury would be available in federal courts under the Sixth Amendment. Ten members of the jury are permitted to render a verdict, however, in all cases except first degree murder. CONSTITUTION, art. 1, § 11; ORE. REV. STAT. 136.610 (1957).

South Carolina guarantees a right to trial by jury for all offenses in which a jury would be available in federal courts under the Sixth Amendment. However, in all but a group of the most serious crimes, a six man jury is provided. CONSTITUTION, art. 1, § 18, art. 1, § 25, art. 5, § 22; S.C. CODE § 15-618, § 15-612 (1962).

New York guarantees a right to trial by jury for all offenses in which a jury trial would be available under the Sixth Amendment in all areas outside of New York City. However, outside New York City a six man jury is provided for offenses where the maximum potential sentence does not exceed one year imprisonment. In New York City jury trials are denied where the maximum potential sentence does not exceed one year. CONSTITUTION, art. 1, § 2, art. 6, § 18; PENAL LAW § 1937 (1944); CODE CRIM. P. §§ 702, 710 (1958); N.Y.C. CRIM. CT. ACT. § 40 (1966); N.Y.C. CRIM. CT. ACT. § 31 (1963); *People v. Sanabria*, 42 Misc. 2d 464, 249 N.Y.S. 2d 66, 71 (App. Div. 1964).

APPENDIX C

THE RIGHT TO TRIAL BY JURY IN LOUISIANA

1. Existing Provisions of Law

The right to trial by jury in Louisiana depends primarily on the question of whether the Court may or must impose a sentence "at hard labor." If the statute defining the crime does not provide that a person convicted may be imprisoned at hard labor, the matter must be tried by the court without a jury. Article 7, Section 41 of the Louisiana Constitution, Article 779 of the Code of Criminal Procedure of Louisiana; See Appendix A, *supra*. If the statute defining the crime provides that the court *may* sentence a convicted defendant to a term of imprisonment at hard labor, a defendant is entitled, under Louisiana law, to be tried before a five man jury. Article 7, Section 41, Louisiana Constitution; Article 782 of the Code of Criminal Procedure of Louisiana. If the statute defining the crime provides that the sentence *must* be at hard labor, Louisiana law provides for a twelve man jury, only nine of whom must concur in a verdict. *Ibid.* In capital cases, a unanimous verdict of a jury of twelve is required. *Ibid.*

Among the offenses which are not punishable at hard labor and therefore categorized as misdemeanors for which there is no trial by jury are:

> Aggravated battery resulting from breach of the peace. LA. REV. STAT. 14:34.1 (Cum. Supp. 1962) (ten years maximum imprisonment).
>
> Indecent behavior with juveniles. LA. REV. STAT. 14:81 (Cum. Supp. 1962) (two years maximum imprisonment).

Contributing to the delinquency of a juvenile. LA. REV. STAT. ANN. 14:92 (Supp. 1966) (two years maximum imprisonment).

Aggravated assault. LA. REV. STAT. 14:37 (1950) (two years maximum imprisonment).

Among the offenses for which imprisonment *may* be at hard labor and are therefore triable by a jury of five are:

Aggravated criminal damage to property. LA. REV. STAT. 14:55 (1950) (fifteen years maximum imprisonment).

Aggravated battery. LA. REV. STAT. 14:34 (1950) (ten years maximum imprisonment).

Forgery. LA. REV. STAT. 14:72 (1950) (ten years maximum imprisonment).

The *only* charges in Louisiana on which an accused is entitled to a twelve man jury whose verdict must be unanimous are murder LA. REV. STAT. 14:30 (1950), aggravated rape LA. REV. STAT. 14:42 (1950), and aggravated kidnapping LA. REV. STAT. 14:44 (1950)..

2. The Historical Development of the Jury Trial Provisions of Louisiana Law.

The Territory of Orleans, which was coextensive with the present boundaries of the State of Louisiana, was created by the United States Congress by the Act of March 26, 1804, c. 38, 2 Stat. 283. Section 5 of that Act provided for trial by jury in all criminal cases.

On May 4, 1805, the Legislative Council of the Territory of Orleans passed "An Act for the punishment of crimes and misdemeanors." Section 33 ordained that criminal procedure would be "in conformity with the common law of England." Section 34 provided:

that the trial of every person, for any of the crimes and misdemeanors aforesaid, shall be by jury, if the party accused or the person who prosecutes desires it.

The Federal Enabling Act of Feb. 20, 1811, c. 21, 2 Stat. 641, authorized the people of the Territory of Orleans to draw up a state constitution, the provisions of which, *inter alia*, "shall secure to the citizen the trial by jury in all criminal cases * * * ." Sec. 3. The State of Louisiana was admitted to the Union by the Act of April 8, 1812, c. 50, 2 Stat. 701.

In its first constitution, ratified in 1812, Louisiana guaranteed, "in all criminal prosecutions . . . trial by an impartial jury of the vicinage." 3 WEST'S L.S.A. CONST. 522 (1955). The right to trial by jury in all criminal prosecutions was retained in the subsequent constitutions of 1845 (Art. 107, 3 WEST'S L.S.A. CONST. 536), 1852 (Art. 109, 3 WEST'S L.S.A. CONST. 556), and 1864 (Title VII, Art. 105, 3 WEST'S L.S.A. CONST. 588).

The first diminution of the right to trial by jury in Louisiana appears in the constitution of 1879, which provided that "where the penalty is not necessarily imprisonment at hard labor or death, the General Assembly may provide for the trial thereof by a jury, less than twelve in number . . . " Bill of Rights, Art. 7, 3 WEST'S L.S.A. CONST. 612 (1955). The following year, the legislature passed "An Act to provide for the trial of offenses where the penalty is not necessarily imprisonment at hard labor or death," Section 4 of which established a five-man jury for such cases. Act 35 of March 17, 1880.

The constitution of 1898 went further and entirely eliminated the right of one charged with a crime not pun-

ishable by imprisonment at hard labor—the so-called misdemeanor in Louisiana—to be tried by jury, even the truncated five-man jury. Art. 9. Art. 116 provides that:

> All cases in which the punishment may not be at hard labor shall, until otherwise provided by law, which shall not be prior to 1904, be tried by the judge without a jury. . . . 3 WEST'S L.S.A. CONST. 694 (1955).

Art. 116 further provided that in non-capital cases where the punishment is necessarily at hard labor, only nine jurors need concur in a guilty verdict. 3 WEST'S L.S.A. CONST. 694 (1955). Although there have been various amendments and codifications of the Louisiana statutory and constitutional provisions relating to trial by jury since the 1898 constitution, there has been no substantive change in the law. See *State v. Garrison*, 243 La. 787, 843, 154 So. 2d 400, 420 (1963), reversed on other grounds *sub nom. Garrison v. Louisiana*, 379 U.S. 64 (1964).

Thus, the aberrant provisions of Louisiana law relating to trial by jury were not derived from Louisiana's Civil Law heritage. From 1805, prior to Louisiana's admission to the union, and consistently until 1879 the common law jury trial right was in full force and effect. Modifications of that right resulted from constitutional changes in 1879 and 1898.